

46 Am. Jur. 2d Judges § 56

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Judges

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VII. Compensation; Benefits; Allowances for Expenses

A. In General

§ 56. Validity of disparities in compensation or benefits for judges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  [22\(.5\)](#), [22\(5\)](#)

Judicial salaries do not necessarily need to conform to territorial uniformity in order to survive an equal protection challenge.¹ Disparities between the salaries of judges on the same court level but in different locations have been challenged as violating judges' equal protection rights under both the applicable state and federal constitutional provisions, the success of such challenges sometimes based on the comparative similarity of the judges' duties and responsibilities, the size of case loads, population size, and the cost of living of the place in which the judges' offices are located.² For instance, probate judges were not similarly situated to magistrate judges for compensation purposes, and therefore the county's payment of longevity increases to magistrate judges and not probate judges was not a violation of a probate judge's equal protection rights; the state constitution created magistrate judges and probate judges as separate classes with separate jurisdictions, and statutes set forth separate jurisdiction, duties, and qualifications.³ A salary disparity between judges on the same court level in two different counties does not violate equal protection absent a showing that costs of living in the counties is comparable.⁴ Disparate judicial salary schedules do not involve suspect classes or fundamental rights and are therefore subject to rational basis review when challenged on equal protection grounds.⁵

Under an equal protection challenge, a discriminatory regulation within a judicial retirement scheme which merely regulates the amount of pension benefits available based on certain contingencies, without infringing on a judge's right to pursue an occupation,⁶ is subjected to the rational basis test.⁷ Under this type of analysis, a retirement scheme is not invalidated merely because its judicial plan differs in some aspects from that offered to other state employees.⁸

Observation:

A state scheme which offsets a judicial pension by the amount of federal salary received and totally denies a judicial pension when the total income from both federal salary and pension benefits exceeds the amount the judge would have received if the party had stayed on the state bench has a reasonable purpose of preventing judges from being wooed off the state bench.⁹

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Footnotes

- 1 [Davis v. Rosenblatt](#), 159 A.D.2d 163, 559 N.Y.S.2d 401 (3d Dep't 1990).
As to equal protection of the laws, generally, see Am. Jur. 2d, Constitutional Law §§ 823 to 941.
- 2 [Davis v. Rosenblatt](#), 159 A.D.2d 163, 559 N.Y.S.2d 401 (3d Dep't 1990).
- 3 [Lewis v. Chatham County Bd. of Com'rs](#), 298 Ga. 73, 779 S.E.2d 371 (2015).
- 4 [Affronti v. Crosson](#), 95 N.Y.2d 713, 723 N.Y.S.2d 757, 746 N.E.2d 1049 (2001).
- 5 [Affronti v. Crosson](#), 95 N.Y.2d 713, 723 N.Y.S.2d 757, 746 N.E.2d 1049 (2001).
- 6 [Hargrove v. Board of Trustees of Maryland Retirement System](#), 310 Md. 406, 529 A.2d 1372 (1987).
- 7 [Walker v. Employees Retirement System of Texas](#), 753 S.W.2d 796 (Tex. App. Austin 1988), writ denied, (Nov. 30, 1988).
As to equal protection of the laws, generally, see Am. Jur. 2d, Constitutional Law §§ 823 to 941.
- 8 [Hargrove v. Board of Trustees of Maryland Retirement System](#), 310 Md. 406, 529 A.2d 1372 (1987).
- 9 [Hargrove v. Board of Trustees of Maryland Retirement System](#), 310 Md. 406, 529 A.2d 1372 (1987).

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